

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THOMAS BARTLETT WHITAKER,

Petitioner,

-VS-

RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

CIVIL NO. 4:10-mc-00293

CAPITAL CASE

PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL

Undersigned counsel, on behalf of Thomas Bartlett Whitaker, respectfully asks this Court to appoint David R. Dow and Katherine C. Black to represent Mr. Whitaker in federal habeas corpus proceedings.

Thomas Bartlett Whitaker was sentenced to death March 8, 2007 in the 400th District Court of Fort Bend County, Texas. On June 24, 2009, the Texas Court of Criminal Appeals affirmed Mr. Whitaker's sentence on direct appeal. *Whitaker v. State*, 286 S.W.3d 355 (Tex. Crim. App. 2009). On June 30, 2010, the state court denied relief in state habeas corpus proceedings. *Ex parte Whitaker*, No. 73,421-01 (Tex. Crim. App. 2010) (unpublished).

Mr. Whitaker is an indigent person, lacking the funds necessary to retain counsel.¹ Undersigned counsel has consulted with Mr. Whitaker, who desires and agrees that undersigned be appointed to represent him in these proceedings. Counsel has also consulted with Attorney David A. Schulman, who has indicated that he is agreeable to the representation of Mr. Whitaker by undersigned counsel. Therefore, on behalf of Mr. Whitaker, undersigned counsel request that this Court appoint him to represent Mr. Whitaker “throughout...all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures...[and] in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.” 18 U.S.C. § 3599(e); *see also Harbison v. Bell*, ___ U.S. ___, 129 S.Ct. 1481 (2009).

Undersigned counsel David R. Dow is an attorney licensed to practice law in the State of Texas, the United States District Court for the Southern District of Texas, the United States District Court for the Eastern District of Texas, the United States Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States. Mr. Dow is presently a Distinguished Professor at the University of Houston Law Center, and since 1988 has represented approximately 50 death row inmates in their post-conviction appeals, including both state and federal habeas corpus proceedings.

Undersigned counsel further requests that this Court appoint Katherine C. Black as second counsel to assist undersigned in the representation of Mr. Whitaker. The complexity of capital habeas corpus proceedings, coupled with the “seriousness of the possible penalty,” renders additional counsel necessary to provide proper representation to Mr. Whitaker. 18 U.S.C. § 3599; *McFarland v. Scott*, 512 U.S. 849, 855 (1994). Ms. Black is a staff attorney with

¹ Undersigned has requested a certified statement of Mr. Whitaker’s inmate trust account, which will be filed with the court as soon as it is received.

the Texas Defender Service, which specializes in the representation of death-sentenced persons in habeas corpus proceedings. Ms. Black is admitted to practice in this Court, as well as in the United States District Courts for the Northern and Eastern Districts of Texas and the United States Court of Appeals for the Fifth Circuit. Ms. Black is licensed to practice law in the State of Texas and the District of Columbia. Ms. Black is willing to accept this appointment.

Accordingly, through undersigned, Mr. Whitaker respectfully requests that this Court appoint David R. Dow and Katherine C. Black pursuant to 18 U.S.C. § 3599.

Respectfully submitted,

s/ David R. Dow

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CERTIFICATE OF SERVICE

I certify that on Thursday, July 29, 2010, a copy of the foregoing pleading was electronically served on counsel for the Respondent by filing the document with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court.

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s/ David R. Dow

David R. Dow

CERTIFICATE OF CONFERENCE

I certify that I have conferred with opposing counsel, Matthew D. Ottoway, who has indicated that the Office of the Texas Attorney General takes no position on the matter.

s/ David R. Dow

David R. Dow